

United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

CROSSETT-WESTERN LUMBER COMPANY, a  
Corporation,

Appellant,

vs.

SUDDEN & CHRISTENSON, Claimants of the  
Cargo of the American Steamship "Tam-  
pico",

Appellee.

---

Apostles on Appeal.

---

Upon Appeal from the Southern Division of the  
United States District Court for the  
Northern District of California,  
First Division.

---

FILED

AUG 22 1922

F. D. MONCKTON,  
CLERK.



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

CROSSETT-WESTERN LUMBER COMPANY, a  
Corporation,

Appellant,

vs.

SUDDEN & CHRISTENSON, Claimants of the  
Cargo of the American Steamship "Tam-  
pico",

Appellee.

---

Apostles on Appeal.

---

Upon Appeal from the Southern Division of the  
United States District Court for the  
Northern District of California,  
First Division.

---



INDEX TO THE PRINTED TRANSCRIPT OF  
RECORD.

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Amended Praecipe for Apostles on Appeal ...	1
Amendment to Answer to Libel .....	26
Amendment to Cross-libel .....	28
Assignments of Error .....	34
Bond on Appeal .....	37
Certificate of Clerk U. S. District Court to Apostles on Appeal .....	41
DEPOSITION ON BEHALF OF CLAIM- ANT:	
CAHILL, ARTHUR BOWLES .....	9
Cross-examination .....	21
Final Decree .....	31
Notice of Appeal .....	32
Notice of Filing of Bond on Appeal .....	36
Opinion and Order to Enter Decree in Favor of Cross-libelant for \$8799.96, etc. ....	24
Statement of Clerk, U. S. District Court .....	3
Stipulation and Order Concerning Original Ex- hibits .....	40
Stipulation and Order Re Substitution of Ex- ecutors of Estate of Ed. Christenson ....	46

Index.	Page
Stipulation and Order Re Use of Apostles on Appeal in Circuit Court of Appeals—Case No. 3533 .....	44
Stipulation and Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including September 1, 1922, to File Record and Docket Cause .....	43

In the Southern Division of the United States  
District Court, for the Northern District of  
California, First Division, In Admiralty.

No. 16030.

CROSSETT-WESTERN LUMBER CO.,  
Libelant,

vs.

THE CARGO OF THE AMERICAN STEAM-  
SHIP "TAMPICO,"

Respondent,

SUDDEN & CHRISTENSON,  
Cross-Libelant,

vs.

CROSSETT-WESTERN LUMBER CO.,  
Cross-Respondent.

**Amended Praecept for Apostles on Appeal.**

To the Clerk of the above-entitled Court:

Please prepare transcript of record on this cause  
and include therein:

1. The statement required by Paragraph 1 of  
Section 1 of Rule 4 of the Rules of Admiralty of  
the United States Circuit Court of Appeals for  
the *Northern* Circuit.

2. Notice of Appeal.

3. Assignment of errors.

4. Notice of filing bond on appeal.

5. Bond on appeal.

6. Amended answer.

7. Amended cross libel.
8. Decree of the above-entitled Court filed May 1, 1922.
9. Memorandum decision of the above-entitled Court. [1\*]
10. Stipulation and order concerning original exhibits.
11. Deposition of Arthur Bowles Cahill, taken August 1, 1921.
12. This praecipe.

PLATT & PLATT, MONTGOMERY &  
FALES,

Proctors for Libelant, Cross-Respondent and Appellant.

HUGH MONTGOMERY,  
Of Counsel.

[Endorsed]: Filed August 9, 1922. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.  
[2]

---

\*Page-number appearing at foot of page of original certified Apostles on Appeal.



In the Southern Division of the United States  
District Court, for the Northern District of  
California, First Division.

No. 16030.

CROSSETT-WESTERN LUMBER CO., a Cor-  
poration,

Libelant,

vs.

THE CARGO OF THE AMERICAN STEAM-  
SHIP "TAMPICO,"

Respondent.

**Statement of Clerk, U. S. District Court.**

**PARTIES.**

Libelant and Cross-Respondent:

CROSSETT-WESTERN LUMBER COM-  
PANY, a Corporation.

Respondent:

THE CARGO OF THE AMERICAN  
STEAMSHIP "TAMPICO."

Claimant and Cross-Libelant:

SUDDEN & CHRISTENSON.

PROCTORS.

For Libelant and Cross-Respondent:

HUGH MONTGOMERY, Esq., PLATT &  
PLATT, MONTGOMERY & FALES,  
Portland, Oregon.

For Respondent, Claimant and Cross-Libelant:

IRA S. LILLICK, Esq., San Francisco, Calif.

## PROCEEDINGS.

1916.

May

17. Filed verified libel for charter hire. Issued monition for the attachment of the cargo of the American Steamship "Tampico," which was afterwards returned with the following return of the U. S. Marshal endorsed thereon:

"In obedience to the within monition, I attached the cargo of the Am. Strmr. 'Tampico' therein described, on the 17th day of May, 1916 and have given due notice to all persons claiming the same that this Court will, on the 30th day of May, 1916 (if that day be a day of jurisdiction, if not on the next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same. I further return that I posted a notice of seizure on the herein named cargo of the Am. Str. 'Tampico.' I hereby further return that I served a copy of this monition on E. J. Thomas, 2d Officer of the above-named Am. S. S. 'Tampico' at S. F.

Dated San Francisco, May 17th,  
1916.

J. B. HOLOHAN,  
United States Marshal,  
By Thos. F. Mulhall,  
Deputy."

Filed claim of Sudden & Christenson, a corporation, to said cargo.

Filed bond for release of cargo in the sum of \$12,500.00.

October 25. Filed answer of respondent.  
Filed cross-libel by Sudden of Christensen.

1918

September 5. Filed answer to cross-libel.

December 19. Filed depositions of H. S. Mitchell and R. T. Platt, taken on behalf of libelant.

January 13. Filed depositions of Edwin A. Christensen, Arthur B. Cahill and F. M. Barry, taken on behalf of claimant and cross-libelant. [4]

1919.

November 18. This cause came on this day for hearing before the Honorable Frank H. Rudkin, Judge. After hearing, the Court ordered that the case be submitted on the record, and briefs to be filed.

December 17. Filed stipulation as to facts.

1920.

- January 13. The Court this day filed an opinion  
in which it was ordered that a decree be entered in favor of libelant.
- February 5. The Court this day filed an opinion disallowing the sum of \$1034.50 claimed by libelant.
- March 18. Filed decree.
- June 23. Filed notice of appeal.  
Filed supersedeas and cost bond on appeal.
- July 8. Filed assignment of errors.
- August 7. Filed apostles on appeal with Clerk,  
U. S. Circuit Court of appeals.

1921.

- April 9. Filed Mandate from U. S. Circuit Court of Appeals, Ninth Circuit, reversing the Decree of this Court, and remanding the cause to this Court, with instructions to ascertain and adjudge the amount, if any, to be awarded the cross-libelant.

September 26. Filed deposition of A. B. Cahill.

October 11. Cause submitted. [5]

1922.

- March 9. Filed opinion and order to enter a decree for cross-libelant for \$8799.96 with interest, etc.
18. Filed amendment to answer.  
Filed amendment to cross-libel.

- |      |                              |
|------|------------------------------|
| May  | 1. Filed final decree.       |
| July | 3. Filed notice of appeal.   |
|      | Filed assignment of errors.  |
|      | 8. Filed bond on appeal. [6] |
- 

In the Southern Division of the United States  
District Court, in and for the Northern Dis-  
trict of California.

First Division. In Admiralty.

CROSSETT WESTERN LUMBER COMPANY,  
Libellant,

vs.

THE CARGO OF THE AMERICAN STEAM-  
SHIP "TAMPICO,"

Respondent.

SUDDEN & CHRISTENSON,

Claimant and Cross-Libellant.

CROSSETT WESTERN LUMBER COMPANY,  
Cross-Libellee.

**(Deposition of Arthur Bowles Cahill.)**

BE IT REMEMBERED: That on Monday,  
August 1, 1921, pursuant to stipulation of counsel  
hereunto annexed, at the offices of Ira S. Lillick,  
Esq., in the Kohl Building, in the city and county  
of San Francisco, State of California, personally  
appeared before me, Francis Krull, a United States  
Commissioner for the Northern District of Cali-  
fornia, authorized to take acknowledgments of bail

and affidavits, etc., Arthur Bowles Cahill, a witness called on behalf of claimant and cross-libelant.

T. M. Levy, Esq., representing Ira S. Lillick, Esq., appeared as proctor for claimant and cross-libelant, and Hugh Montgomery, Esq., appeared as proctor for libelant and cross-libellee, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the [7] proctors for the respective parties that the deposition of the above-named witness may be taken *de bene esse* on behalf of claimant and cross-libelant, at the offices of Ira S. Lillick, Esq., in the Kohl Building, in the city and county of San Francisco, State of California, on Monday, August 1, 1921, before Francis Krull, a United States Commissioner for the Northern District of California, and in shorthand by Charles R. Gagan.

(It is further stipulated that the deposition, when written up, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality and competence of the testimony are reserved to all parties.

(It is further stipulated that the reading over

(Deposition of Arthur Bowles Cahill.)

of the testimony to the witness and the signing thereof are hereby expressly waived.) [8]

---

**Deposition of Arthur Bowles Cahill for Claimant.**

ARTHUR BOWLES CAHILL, called on behalf of claimant and cross-libelant, sworn.

Mr. LEVY.—Q. Where are you employed?

A. Sudden & Christenson.

Q. In what capacity? A. Secretary.

Q. Where were you employed from November, 1915 to February, 1916?

A. By Sudden & Christenson.

Q. In what capacity at that time? A. Secretary.

Q. What were your duties with Sudden & Christenson at that time?

A. The duties of a secretary, and keeping accounts of vessels.

Q. In the general course of your employment, were you familiar with the movements of vessels controlled by Sudden & Christenson? A. I was.

Q. And were you familiar with the details of handling those vessels? A. I was.

Q. And the accounts in regulation thereto?

A. Yes, sir.

Q. Do you know whether, on or about September 23, 1915, Sudden & Christenson, through their agents, Dearborn & Co., of New York, had sub-chartered the steamship "Eureka" to W. R. Grace & Co.?

A. Yes, sir.



(Deposition of Arthur Bowles Cahill.)

Q. They had? A. Yes, sir.

Q. And do you know that on or about October 18, 1915, Sudden & Christenson had chartered the steamship "Tampico" from the Crossett Western Lumber Company? A. Yes, sir.

Q. Where are those charter parties?

A. Just what charter-parties do you mean?

Q. The charter party under date October 18, 1915, on the "Tampico," between Sudden & Christenson and the Crossett Western Lumber Company; as a matter of fact, Mr. Cahill, that charter party has been introduced in evidence in this case, has it not? [9]

A. Yes, but I believe we should have the original charter-party on record in our office.

Mr. LEVY.—It is hereby stipulated and agreed that a copy of the charter-party under date October 18, 1915, between Crossett Western Lumber Company, as owners, and Sudden & Christenson as charterers, on the steamship "Tampico," appears on pages 10 to 14, both inclusive, in the Apostles on Appeal, filed in the United States Circuit Court of Appeals for the Ninth Circuit, Case No. 3533 therein.

And it is further stipulated and agreed that the nitrate charter-party between Sudden & Christenson's charterers, through their agents, D. B. Dearborn & Co., of New York, dated September 23, 1915, on the steamship "Eureka," is of record in evidence in the above-entitled matter as Christenson's



(Deposition of Arthur Bowles Cahill.)

Exhibit 1, the offer of which nitrate charter-party in evidence appears on page 114 of the said Apostles on Appeal.

Q. Mr. Cahill, are you familiar with the operations of those vessels during the time they were being handled by Sudden & Christenson?

A. Yes, sir.

Q. And with the relations of Sudden & Christenson with Crossett Western Lumber Company and W. R. Grace & Co. in regard thereto? A. Yes, sir.

Q. Prior to December 20, 1915, were Sudden & Christenson negotiating in any way with W. R. Grace & Co., with reference to the "Tampico"?

A. Yes, sir.

Q. What were those negotiations?

A. Those negotiations were for the freighting of the cargo of nitrate from the West Coast of South America to the East Coast of the United States.

Q. On what vessel?

A. That was on the steamer "Tampico."

Q. On or about December 20, 1915, did you send a letter to [10] Crossett Western Lumber Company for the purpose of ascertaining the redelivery date of the "Tampico" by the Crossett Western Lumber Company to her owners? A. Yes, sir.

Mr. LEVY.—It is hereby stipulated and agreed that the letter referred to by the witness in his answer to the last question appears on page 154 of the said apostles on appeal, and is numbered 6.

(Deposition of Arthur Bowles Cahill.)

Q. I hand you a copy of the said apostles on appeal and direct your attention to the letter just referred to, under date December 20, 1915, and ask you what was the obligation to the original nitrate charterers of the steamer "Eureka" that is referred to in that letter?

A. Sudden & Christenson entered into a contract to move a cargo of nitrate from the West Coast of South America to the East Coast of the United States.

Q. On what vessel was that, Mr. Cahill?

A. On the steamer "Eureka."

Q. And what happened with reference to that engagement between Sudden & Christenson and W. R. Grace & Co.?

A. Sudden & Christenson were obligated to move this cargo by the steamer "Eureka," and wanted to substitute the steamer "Tampico."

Q. Why couldn't they use the steamer "Eureka" to carry out that obligation to W. R. Grace & Co.?

A. Because, as I remember it, the steamer "Eureka" was on the Atlantic Coast, and the Panama Canal was closed.

Q. And what was the result of that situation?

A. The result was that we desired to fulfill our contract with the steamer "Tampico."

Q. Is it the fact, then, that because of the closing of the canal the "Eureka" was not available to carry out its engagement with W. R. Grace & Co.?

A. I think it is, yes, sir.

Q. Let me ask you what was the reason that the

(Deposition of Arthur Bowles Cahill.)

“Eureka” could not [11] be used to carry out her engagement with W. R. Grace & Co.?

A. Well, now, I will tell you, gentlemen, this is some time ago, and the details of all this thing are not quite clear to me.

Q. You have testified, Mr. Cahill, that the “Eureka” was on the Atlantic Coast, that the Canal was closed, and that the engagement that Sudden & Christenson had with the “Eureka” was to carry a cargo of nitrate from the West Coast of South America to the East Coast of the United States.

A. Yes, sir.

Q. Is it or is it not the fact, then, that because of this situation the “Eureka” could not be used to carry the cargo as agreed upon? A. Yes, sir.

Q. On or about December 27, 1915, did you receive a communication from the Crossett Western Lumber Company advising you that the terms of the charter-party between Crossett Western Lumber Company and the owners of the “Tampico” were the same as the terms of the charter-party on the “Eureka,” except that the delivery date was June 15, 1916 on the “Tampico”? A. Yes, sir.

Mr. LEVY.—It is hereby stipulated and agreed that the letter referred to in the last question and answer, and dated December 27, 1915, from Crossett Western Lumber Company to Sudden & Christenson appears on pages 154–55 of the said apostles on appeal, and is number 7.

Q. What, if anything, did you do, Mr. Cahill, with reference to closing your option on the “Tam-

(Deposition of Arthur Bowles Cahill.)

pico" for a second voyage, after receipt of this letter of December 27, 1915?

A. We notified the Crossett Western Lumber Company that we would avail ourselves of that option.

Q. I hand you the said apostles on appeal, and call your attention to a letter dated December 31, 1915, to Crossett Western Lumber Company, from Sudden & Christenson, and appearing on pages 156-7 [12] of the said apostles on appeal, and ask you if that is the notification that was sent by Sudden & Christenson to the Crossett Western Lumber Company, notifying the last-named company that you exercised your option for a second voyage of the "Tampico"?      A. Yes, sir.

Mr. LEVY.—It is hereby stipulated and agreed that the letter from Sudden & Christenson to Crossett Western Lumber Company, notifying the last-named company of the exercise of the option by Sudden & Christenson for a second voyage of the "Tampico" appears on pages 156-57 of the said apostles on appeal, and is numbered 8.

Q. Did you or did you not receive an answer to that notification of the exercise of your option?

A. Yes, I believe we did.

Q. I hand you the said apostles on appeal and call your attention to a letter dated January 3, 1916, from Crossett Western Lumber Company to Sudden & Christenson, and appearing on page 157 of the said apostles on appeal, and ask you if that is the letter that you received from Crossett Western

(Deposition of Arthur Bowles Cahill.)

Lumber Company in answer to your letter notifying Crossett Western Lumber Company of the exercise of your option on the "Tampico" for a second voyage?     A. Yes, it is.

Mr. LEVY.—It is stipulated and agreed that the letter last referred to by the witness appears on page 157 of the said apostles on appeal, and is numbered 9.

Q. Mr. Cahill, what, if anything, did you do, and when, after the receipt of the letter dated January 3, 1916, that you have referred to, with reference to engaging the "Tampico" to W. R. Grace & Co?

A. We immediately, I think possibly the following day, made a contract with W. R. Grace & Co. to move a [13] cargo of nitrate from the West Coast of South America to the East Coast of the United States via the "Tampico."

Q. What form did that agreement take?

A. That was confirmed by a letter from our agents in New York, Messrs. D. B. Dearborn & Co., to W. R. Grace & Co.

Q. Who are D. B. Dearborn & Company, of New York?

A. D. B. Dearborn & Co. of New York were our New York agents.

Q. For what purpose?

A. For chartering for our account, for the handling of our vessels on the Atlantic Coast.

Q. Had they customarily acted for you in that capacity prior to this time?     A. Yes, sir.

Q. For how long?



(Deposition of Arthur Bowles Cahill.)

A. I would say since about 1912.

Q. In the course of their duties as your agents, did they customarily contract for vessels in their own name?     A. Yes, sir.

Q. And for your account?     A. Yes, sir.

Q. Between whom were the negotiations that you have testified to between Sudden & Christenson and W. R. Grace & Co. for the "Tampico" conducted?

A. They were conducted by G. B. Dearborn.

Q. With what office of W. R. Grace & Co.?

A. The New York office of W. R. Grace & Co.

Mr. LEVY.—It is hereby stipulated and agreed that the following letter was sent by D. B. Dearborn & Co. of New York as the New York agents of Sudden & Christenson, to W. R. Grace & Co. covering a freight engagement on the "Tampico":

"January 4, 1916.

"Messrs. W. R. Grace & Co.,  
New York City.

Attention Mr. Fischer:

"Dear Sirs:

"Yours of the 3d received.

"'Tampico': We confirm your statement that this steamer is substituted for the 'Eureka' and if the Canal is closed [14] when she is ready to sail from nitrate port she is to proceed to San Francisco with \$1 per ton less freight than via the Canal, say \$8 per ton.

Very truly yours."

(Deposition of Arthur Bowles Cahill.)

Q. Do you know whether or not that letter was ever received by W. R. Grace & Co.?

A. Why, it must have been, yes.

Q. Why do you say it must have been?

A. Because the steamer went on that voyage.

Q. So that pursuant to the agreement contained in that letter, the "Tampico" proceeded on a voyage in lieu of the "Eureka"? A. Yes, sir.

Q. What, if anything, was attached to that letter that was sent to W. R. Grace & Co. under date January 4, 1916?

A. I think a copy of the charter-party of the "Eureka."

Mr. LEVY.—It is hereby stipulated and agreed that a copy of the said letter under date of January 4, 1916, to W. R. Grace & Co., of New York and from D. B. Dearborn & Co. of New York, the New York agents of Sudden & Christenson, together with a copy of the nitrate charter-party dated September 23, 1915, of the steamer "Eureka," between W. R. Grace & Co. and D. B. Dearborn & Co., as the New York agents of Sudden & Christenson, is of record in the above-entitled matter, and that the offer of said documents in evidence appears on page 114 of the said apostles on appeal.

Q. What did you proceed to do pursuant to the contract that you have testified to with W. R. Grace & Co., with reference to the "Tampico"?

A. We dispatched the steamer "Tampico" on this voyage for a cargo of nitrate, from the West Coast

(Deposition of Arthur Bowles Cahill.)  
of South America to the East Coast of North America.

Q. Upon what contingencies, if any, did the carriage of this cargo for W. R. Grace & Co., either to the Atlantic Coast of the United [15] States or the Pacific Coast of the United States depend?

A. It depended upon whether or not the Panama Canal was closed at the time the steamer sailed from her nitrate port.

Q. If the Panama Canal was open at the time the "Tampico" left her nitrate port, what was the agreed freight rate?

A. The agreed freight rate was \$9 per ton.

Q. To where?

A. To the East Coast of the United States.

Q. And if the canal was closed at the time the vessel left her nitrate port, what was the agreed-upon freight rate, and to where?

A. The freight rate was \$8 per ton, to the West Coast of the United States.

Q. What would you say, therefore, composed the contract on the "Tampico" with W. R. Grace & Co.?

Mr. MONTGOMERY.—I would like the record to show an objection to the question upon the ground that the contract is in writing, has already been introduced in evidence, and is self-explanatory.

A. The charter-party.

Mr. LEVY.—Q. What charter-party?

A. The letter that D. B. Dearborn & Co. wrote for our account to Messrs. W. R. Grace & Co., together with the charter-party of the "Eureka."



(Deposition of Arthur Bowles Cahill.)

Q. When were this letter and the charter-party on the "Eureka" sent to W. R. Grace & Co. by D. B. Dearborn & Co. as your agents?

A. On January 4.

Q. What year?      A. 1916.

Q. When did you first receive notice from the Crossett Western Lumber Company that the owners of the "Tampico" required redelivery of the vessel by May 15, 1916, instead of June 15, 1916?

A. Along about January 11, 1916.

Q. I hand you a copy of a telegram under date of January 11, [16] 1916, from H. S. Mitchell to Sudden & Christenson, appearing on page 162 of the said apostles on appeal, and ask you if that is the first notification that you received that the owners of the "Tampico" required redelivery of the vessel prior to May 15, 1916?      A. Yes.

Mr. LEVY.—It is hereby stipulated and agreed that the telegram referred to in the last answer and question appears on page 162 of the said apostles on appeal, and is numbered 15.

Q. When did the second voyage of the "Tampico" commence?

A. I believe sometime in February, 1916.

Q. To refresh your recollection, was it February 22, 1916?      A. I think it was, yes.

Q. What was that second voyage?

A. That second voyage was a voyage to the East Coast of South America for a return to the East Coast of the United States with a cargo of nitrate.

Q. For whom?

(Deposition of Arthur Bowles Cahill.)

A. For Messrs. W. R. Grace & Co.

Q. And is that the voyage that was undertaken pursuant to the letter of January 4, 1916, to which was attached a copy of the nitrate charter on the "Eureka"?     A. Yes.

Q. I hand you the said apostles on appeal, and call your attention to a statement of account, or of loss and damage, covering the loss and damage claimed by Sudden & Christenson on account of the alleged action upon the part of Crossett Western Lumber Company in directing the "Tampico" to return to San Francisco for redelivery on or about May 15, 1916, instead of proceeding on her voyage for W. R. Grace and Co. to the East Coast of the United States for redelivery on or about June 15, 1916, which statement of account and statement of loss or damage appears on pages 127, 128 and 129 of the said apostles on appeal, and I [17] ask you if that statement is in each and every particular correct, and is a statement of the loss and damage by Sudden & Christenson on that account?

A. Yes, it is.

Q. Is that statement made up in the usual and customary method in the course of your business, and of the business of firms in a similar line of business?     A. Yes, sir.

Q. Was there an additional amount with reference to which you suffered loss or damage on account of the vessel being off hire during the charter term?

A. Yes.

Q. What is that amount?     A. \$2477.27.

(Deposition of Arthur Bowles Cahill.)

Q. So that the total damage suffered by you is the balance due shown in the statement which you have referred to, of \$14,871.57, plus the amount that you have just stated, \$2477.27?     A. Yes.

Cross-examination.

Mr. MONTGOMERY.—Q. If I understood you correctly, Mr. Cahill, the negotiations for the substitution of the “Tampico” were begun about December 20, 1915: Is that correct?

A. I think about that time, yes.

Q. And finally closed on January 4, 1916?

A. Yes.

Q. By letter?     A. Yes.

Q. Do you know the nature of the negotiations which were carried on between those respective dates?

A. They were carried on between our agents, Messrs. D. B. Dearborn & Co. and Messrs. W. R. Grace & Co. in New York; there might be some telegrams in connection with it.

Q. But you have no personal knowledge of those?

A. I cannot remember just now.

Q. But these negotiations, whatever they were, were with reference to the substitution of the “Tampico” under the original charter which you had with W. R. Grace & Co. on the steamship [18] “Eureka”: Is that correct?     A. Yes.

Q. Do you know whether or not that original charter on the steamship “Eureka” was ever released by W. R. Grace & Co. on account of the detention

(Deposition of Arthur Bowles Cahill.)

of the "Eureka" at the Atlantic end of the Canal?

A. I believe it is released automatically by that letter of January 4. [19]

United States of America,

State and Northern District of California,

City and County of San Francisco,—ss.

I certify that, in pursuance of stipulation of counsel on Monday, August 1, 1921, before me, Francis Krull, a United States Commissioner for the Northern District of California, at San Francisco, at the office of Ira S. Lillick, Esq., in the Kohl Building, in the city and county of San Francisco, state of California, personally appeared Arthur Bowles Cahill, a witness called on behalf of claimant and cross-libelant in the cause entitled in the caption hereof; and T. M. Levy, Esq., representing Ira S. Lillick, Esq., appeared as proctor for claimant and cross-libelant, and Hugh Montgomery, Esq., appeared as proctor for libelant and cross-libellee, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the said cause, deposed and said as appears by his deposition hereto annexed.

I further certify that the deposition was then and there taken down in shorthand notes by Charles R. Gagan, and thereafter reduced to typewriting; and I further certify that by stipulation of the proctors for the respective parties, the reading over of the deposition to the witness and the signing thereof were expressly waived.

And I do further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hands to the Clerk of the United States District Court for the Northern District of California, the court for which the same was taken.

And I do further certify that I am not of counsel, nor [20] attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto set my hand in my office aforesaid this 5th day of Aug., 1921.

FRANCIS KRULL, (Seal)

United States Commissioner, Northern District of California, at San Francisco.

[Endorsed]: Filed Sep. 26, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [21]

---

In the Southern Division of the United States District Court, for the Northern District of California, First Division. In Admiralty.

No. 16030.

CROSSETT WESTERN LUMBER CO.,

Libelant,

vs.

THE CARGO OF THE AMERICAN STEAMSHIP "TAMPICO,"

Respondent,



SUDDEN &amp; CHRISTENSON,

Cross-Libellant,

vs.

CROSSETT WESTERN LUMBER CO.,

Cross-Respondent.

**(Opinion and Order to Enter Decree in Favor of  
Cross-libellant for \$8799.96, etc.)**

GOLDEN W. BELL, ANDROS & HENGSTLER  
and PLATT & PLATT, MONTGOMERY &  
FALES, proctors for libellant & cross-respond-  
ent.

IRA S. LILLICK, Esq., proctor for claimant and  
cross-libellant.

The Circuit Court of Appeals having remanded this cause with directions to this Court to find certain facts and enter a decree accordingly, the Court now finds:

The obligation of cross-libellants to Grace & Co. to transport nitrate to the Atlantic Coast on the "Tampico," if the Canal were open at the time that the "Tampico" was ready to sail from the Nitrate Port became fixed on January 4th, 1916. The Canal was open on the day the "Tampico" was ready to sail. The amount [22] that should be awarded to libellant for charter hire under the libel and answer, is the sum of \$6,015.61, being \$8,492.88 the stipulated amount, less the sum of \$2,477.27 due respondent on account of off-hire, conceded by libellant in their supplemental brief.

The amount that should be awarded to cross-libel-

ant as damages under the issues made by the cross-libel and answer thereto is the sum of \$14,851.57.

A decree will therefore be entered for cross-libelant for the difference, being \$8,799.96, with interest from May 19th, 1916, at 7 per cent per annum and costs.

Respondent may amend its answer to the libel to set up its claim for off-hire.

March 9th, 1922.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed Mar. 9, 1922. W. B. Maling,  
Clerk. By Lyle S. Morris, Deputy Clerk. [23]

---

In the Southern Division of the United States District Court, for the Northern District of California, First Division. In Admiralty.

No. 16030.

CROSSETT-WESTERN LUMBER CO.,  
Libelant,

vs.

THE CARGO OF THE AMERICAN STEAMSHIP "TAMPICO,"

Respondent.

SUDDEN & CHRISTENSON,  
Cross-libelant,

vs.

CROSSETT-WESTERN LUMBER CO.,  
Cross-respondent.

**Amendment to Answer to Libel.**

Pursuant to the permission and direction of the above-entitled court, heretofore given and made, claimant and cross-libelant herein hereby amends its answer to the libel on file herein, by adding thereto, after Article V thereof, the following, to be designated as Article VI:

**“VI.**

“That for further and separate defense to the libel of libelant on file herein, claimant alleges the fact to be that said steamship “Tampico” was off-hire from 12:45 P. M. April 3d, 1916 to 3:40 P. M. April 11th, 1916, totaling seven days, 14 hours and 55 minutes. That, pursuant to the terms of said charter-party between [24] Crossett Western Lumber Co. and Sudden & Christenson, claimant is entitled to a deduction in the charter hire of said steamship “Tampico” during the time that she was so off-hire, at the rate of \$325 per day, amounting to the sum of \$2,477.27.”

SUDDEN & CHRISTENSON,

By A. B. Cahill,

Secy.

IRA S. LILLICK,

Proctor for Claimant. [25]

State of California,

City and County of San Francisco,—ss.

A. B. Cahill, being first duly sworn, deposes and says: That he is an officer, to wit: the secretary, of



Sudden & Christenson, a corporation, claimant in the foregoing action, and, as such, is duly authorized to make this verification on behalf of said claimant; that he has read the foregoing amendment to the answer to the libel herein, knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on information or belief, and that, as to those matters, he believes it to be true.

A. B. CAHILL.

Subscribed and sworn to before me this 30th day of March, A. D. 1922.

[Seal]

M. V. COLLINS,

Notary Public, in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Due service and receipt of a copy of the within amendment to answer to libel is hereby admitted this 4th day of April, 1922.

PLATT & PLATT,

MONTGOMERY & FALES,

Proctors for Crossett-Western Lumber Co.

Filed Apr. 18, 1922. W. B. Maling, Clerk. By  
C. W. Calbreath, Deputy Clerk. [26]

In the Southern Division of the United States District Court, for the Northern District of California, First Division. In Admiralty.

No. 16030.

CROSSETT-WESTERN LUMBER CO.,  
Libelant,

vs.

THE CARGO OF THE AMERICAN STEAMSHIP "TAMPICO,"

Respondent.

SUDDEN & CHRISTENSON,  
Cross-libelant,

vs.

CROSSETT-WESTERN LUMBER CO.,  
Cross-respondent.

**Amendment to Cross-libel.**

Pursuant to the permission and direction of the above-entitled Court, heretofore given and made, claimant and cross-libelant herein hereby amends its cross-libel, on file herein, by adding thereto, after Article VIII thereof, the following, to be designated as Article VIII-a:

**VIII-a.**

"That by way of a further cause of cross-libel against Crossett-Western Lumber Co., a corporation, libelant and cross-respondent above named, claimant and cross-libelant alleges the fact to be that said steamship "Tampico"

was off-hire from 12:45 P. M. April 3, 1916 to 3:40 P. M. April 11, 1916, totaling 7 days, 14 hours and 55 [27] minutes. That, pursuant to the terms of said charter-party between Crossett Western Lumber Co. and Sudden & Christenson, claimant is entitled to a deduction in the charter hire of said steamship "Tampico" during the time that she was so off-hire, at the rate of \$325 per day, amounting to the sum of \$2,477.27."

SUDDEN & CHRISTENSON,

By A. B. Cahill,

Secy.

IRA S. LILLICK,

Proctor for Claimant. [28]

State of California,

City and County of San Francisco,—ss.

A. B. Cahill, being first duly sworn, deposes and says: That he is an officer, to wit; the Secretary, of Sudden & Christenson, a corporation, claimant in the foregoing action, and, as such, is duly authorized to make this verification on behalf of said claimant; that he has read the foregoing amendment to cross-libel herein, knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on information or belief, and that, as to those matters, he believes it to be true.

A. B. CAHILL.

Subscribed and sworn to before me this 30th day of March, A. D. 1922.

[Seal]

M. V. COLLINS,

Notary Public,

in and for the City and County of San Francisco,  
State of California.

[Endorsed]: Due service and receipt of a copy of the within amendment to cross-libel is hereby admitted this 4th day of April, 1922.

PLATT & PLATT,

MONTGOMERY & FALES,

Proctors for Crossett Western Lumber Co.

Filed Apr. 18, 1922. W. B. Maling, Clerk. By  
C. W. Calbreath, Deputy Clerk. [29]

---

In the Southern Division of the United States  
District Court, for the Northern District of  
California First Division. In Admiralty.

No. 16030.

CROSSETT-WESTERN LUMBER CO.,

Libelant,

vs.

THE CARGO OF THE AMERICAN STEAM-  
SHIP "TAMPICO,"

Respondent.

SUDDEN & CHRISTENSON,

Cross-Libelant,

vs.

CROSSETT-WESTERN LUMBER CO.,

Cross-Respondent.

**Final Decree.**

This cause having been remanded to the above-entitled Court by the United States Circuit Court of Appeals for the Ninth Circuit, with directions to this Court to find certain facts and enter a decree accordingly, and the Court, in accordance with said directions, having heretofore entered herein its findings as to said fact,

IT IS NOW ORDERED, ADJUDGED AND DECREED by the above-entitled court that Sudden & Christenson, cross-libelant herein, be awarded the sum of \$8,799.96 with interest thereon at the rate of 7 per cent per annum from May 19, 1916, amounting to \$3,666.89, together with costs to be taxed; and that, in default thereof, execution issue against Crossett-Western Lumber Co., and the stipulators on any bond filed by said Crossett-Western Lumber Co., herein.

Signed this 1st day of May, 1922.

M. T. DOOLING,

Judge.

[30]

[Endorsed]: Filed May 1, 1922. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

Entered in Vol. 12 Judg. and Decrees, at page 317.  
[31]

---

In the Southern Division of the United States  
District Court, for the Northern District of  
California First Division. In Admiralty.

No. 16030.

CROSSETT-WESTERN LUMBER CO.,  
Libelant,

vs.

THE CARGO OF THE AMERICAN STEAM-  
SHIP "TAMPICO,"

Respondent.

SUDDEN & CHRISTENSON,  
Cross-Libelant,

vs.

CROSSETT-WESTERN LUMBER CO.,  
Cross-Respondent.

**Notice of Appeal.**

To the cargo of the American Steamship  
"Tampico," respondent, and Sudden & Christ-  
enson, Cross-Libelant, and to Ira S. Lillick,  
Esq., proctor for respondent and cross-appel-  
lant, and to the Clerk of the above-entitled  
court:

Please take notice that the libelant and cross-  
respondent above named hereby appeals from the  
final decree made and executed herein on the 1st  
day of May, 1922, to the United States Circuit

Court of Appeals for the Ninth Circuit, to be holden in and for said Circuit at the City of San Francisco, in the State of California.

Dated at San Francisco, June 27th, 1922.

PLATT & PLATT,

MONTGOMERY & FALES,

Proctors for Libellant, Cross-Respondent and Appellant.

HUGH MONTGOMERY of Counsel. [32]

Service of the within notice of appeal, by delivery of a copy to the undersigned, is hereby admitted this — day of June, 1922.

IRA S. LILLICK,

Proctor for Respondent, Cross-Libellant and Appellee.

Filed Jul. 3, 1922. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [33]

---

In the Southern Division of the United States District Court, for the Northern District of California First Division. In Admiralty.

No. 16030.

CROSSETT-WESTERN LUMBER CO.,

Libellant,

vs.

THE CARGO OF THE AMERICAN STEAM-SHIP "TAMPICO,"

Respondent.



SUDDEN & CHRISTENSON,

Cross-Libellant,

vs.

CROSSETT-WESTERN LUMBER CO.,

Cross-Respondent.

**Assignments of Error.**

The libellant hereby assigns error in the rulings and proceedings of the District Court herein, as follows:

I.

The Court erred in entering a final decree herein, awarding to the cross-libellant the sum of \$8,799.96, principal, and \$3,666.89, interest, for the reason that the items of damage claimed by the cross-libellant were not, under the decision of the Circuit Court of Appeals for the Ninth Circuit, proper items of damage. [34]

II.

The Court erred in refusing to hold from the undisputed record in this case that the cross-libellant had subchartered the vessel in violation of the charter-party between the parties without obtaining the consent of the libellant.

III.

The Court erred in not entering a decree in favor of the libellant and dismissing the cross-libellant, on the ground that the cross-libellant had violated its contract by subchartering the steamship "Tampico" without the consent of the libellant, and for the further reason that the cross-



libelant failed to present to the court any competent or proper evidence in support of its claim for damages, and that the items of damage presented were not proper items of damage.

Dated at San Francisco this 27th day of June, 1922.

PLATT & PLATT,  
MONTGOMERY & FALES,

Proctors for Libelant, Cross-Respondent and  
Appellant.

HUGH MONTGOMERY, of Counsel.

Service of the within assignments of error, by delivery of a copy to the undersigned, is hereby acknowledged this —— day of June, 1922.

IRA S. LILLICK,

Proctor for Respondent, Cross-Libelant and  
Appellee.

[Endorsed]: Filed Jul. 3, 1922. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [35]

---

In the Southern Division of the United States  
District Court, for the Northern District of  
California First Division. In Admiralty.

No. 16030.

CROSSETT-WESTERN LUMBER CO.,

Libelant,

vs.

THE CARGO OF THE AMERICAN STEAM-  
SHIP "TAMPICO,"

Respondent.

SUDDEN &amp; CHRISTENSON,

Cross-Libelant,

vs.

CROSSETT-WESTERN LUMBER CO.,

Cross-Respondent.

**Notice of Filing of Bond on Appeal.**

To IRA S. LILLICK, Esq., Proctor for Respondent  
and Cross-Libelant above named:

You will please take notice that the bond on appeal herein has been this day filed in the office of the Clerk of the District Court of the United States for the Northern District of California, Southern Division, and executed and given by the above-named libelant, and by National Surety Company, a corporation authorized under the laws of California to do business within said state and within the territory in which the above-entitled court has jurisdiction.

July 8th, 1922.

PLATT &amp; PLATT,

MONTGOMERY &amp; FALES,

Proctors for Libelant.

HUGH MONTGOMERY, of Counsel. [36]

Service of the within notice of filing of bond on appeal, by delivery of a copy to the undersigned, is hereby acknowledged this 8th day of July, 1922.

IRA S. LILLICK,

Proctors for Respondent, Cross-Libelant and Appellee.

[Endorsed]: Filed Jul. 8, 1922. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [37]

---

In the Southern Division of the United States District Court, for the Northern District of California First Division. In Admiralty.

No. 16030.

CROSSETT-WESTERN LUMBER CO.,

Libelant,

vs.

THE CARGO OF THE AMERICAN STEAMSHIP "TAMPICO,"

Respondent.

SUDDEN & CHRISTENSON,

Cross-Libelant,

vs.

CROSSETT-WESTERN LUMBER CO.,

Cross-Respondent.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS,  
That we, Crossett-Western Lumber Company, as

principal, and National Surety Company, a corporation as surety, are held and firmly bound unto Sudden & Christenson a copartnership, in the full and just sum of \$15,000.00, to be paid to the said Sudden & Christenson, a copartnership, or their executors, to which payment well and truly to be made we bind ourselves, our successors, executors, administrators and assigns, jointly and severally, by these presents.

Sealed with our seals this 5th day of July, A. D., 1922.

Whereas, in the District Court of the United States for the Northern District of California, Southern Division, in a suit pending in said court between Crossett-Western Lumber Company, libelant, and Sudden & Christenson, Cross-libelant, a final decree was rendered on the 1st day of May, 1922, awarding to said Sudden & Christenson the sum of \$12,466.85, together with their costs and disbursements, and said Crossett-Western Lumber Company having petitioned for an appeal from said decree and [38] filed a copy thereof in the clerk's office of said court, to reverse and modify the same, in the aforesaid case, and a citation directed to the said Messrs. Sudden & Christenson, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, to be holden in the city of San Francisco on the first Monday in October, 1922, having been served on said Messrs. Sudden & Christenson:

NOW, the condition of this obligation is such that if the said Crossett-Western Lumber Company will prosecute its appeal to effect and answer all damages and costs if it fail to make its plea good, then the said obligation to be void; else to remain in full force and effect; said bond to act as a supersedeas.

CROSSETT-WESTERN LUMBER COMPANY.

By PLATT & PLATT,  
MONTGOMERY & FALES.

By HUGH MONTGOMERY,

[Seal] Its Proctors of Record.

NATIONAL SURETY COMPANY.

By F. J. CRISP,

Resident Vice-president.

By A. C. ROBESON,

Resident Assistant Secretary.

[Endorsed]: Filed Jul. 8, 1922. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [39]

---

In the Southern Division of the United States  
District Court, for the Northern District of  
California First Division. In Admiralty.

No. 16030.

CROSSETT-WESTERN LUMBER CO.,

Libelant,

vs.

THE CARGO OF THE AMERICAN STEAM-  
SHIP "TAMPICO"

Respondent.

SUDDEN &amp; CHRISTENSON,

Cross-Libelant,

vs.

CROSSETT-WESTERN LUMBER CO.,

Cross-Respondent.

**Stipulation and Order Concerning Original Exhibits.**

It is hereby stipulated and agreed between the proctors for the respective parties hereto that all the exhibits introduced in evidence at the hearing of the above-entitled cause before the above Court, may be omitted from the apostles on appeal in said cause, and may be filed in the United States Circuit Court of Appeals of the Ninth Circuit in the original form in which the same are respectively introduced before the said Court on the trial of the cause.

Dated: August 3, 1922.

PLATT &amp; PLATT,

MONTGOMERY &amp; FALES,

Proctors for Appellant.

IRA S. LILLICK,

Proctors for Appellee.

It is so Ordered:

FRANK H. RUDKIN,

District Judge.

[Endorsed]: Filed Aug. 7, 1922. W. B. Maling,  
Clerk. By C. M. Taylor, Deputy Clerk. [40]



**Certificate of Clerk U. S. District Court to Apostles  
on Appeal.**

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 40 pages, numbered from 1 to 40, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the case of Crossett-Western Lumber Co., libelant, vs. the Cargo of the American Steamship "Tampico," respondent, No. 16030, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for apostles on appeal (copy of which is embodied herein), and the instructions of the proctors for libelant and appellant herein.

I further certify that the cost for preparing and certifying the foregoing apostles on appeal is the sum of Twelve Dollars and Twenty-five cents (\$12.25) and that the same has been paid to me by the proctor for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 10th day of August, A. D., 1922.

[Seal]

WALTER B. MALING,  
Clerk.

By C. M. Taylor,  
Deputy Clerk. [41]



[Endorsed]: No. 3910. United States Circuit Court of Appeals for the Ninth Circuit. Crossett-Western Lumber Company, a Corporation, Appellant vs. Sudden & Christenson, Claimants of the Cargo of the American Steamship "Tampico," Appellee. Apostles on Appeal: Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed August 10, 1922.

F. D. MONCKTON,

Clerk of the United States Circuit Court of  
Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

---

In the United States Circuit Court of Appeals for  
the *Northern* Circuit.

CROSSETT-WESTERN LUMBER CO.,

Appellant,

vs.

SUDDEN & CHRISTENSON, Owners and Claim-  
ants of the American Steamship "TAM-  
PICO,"

Appellees.

**Stipulation and Order Under Subdivision 1 of  
Rule 16 Enlarging Time to and Including Sep-  
tember 1, 1922, to File Record and Docket  
Cause.**

It is hereby stipulated and agreed that the ap-  
pellant above named may have thirty days from the  
1st day of August, 1922, within which to file in the  
above-entitled court the apostles and record on  
appeal in the above-entitled matter.

PLATT & PLATT, MONTGOMERY &  
FALES,

Proctors for Appellant.

IRA S. LILLICK,

Proctor for Appellee.

It is so ordered.

W. H. HUNT,

U. S. Circuit Judge.

[Endorsed]: No. 3910. In the United States Cir-  
cuit Court of Appeals for the Northern Circuit.  
Crossett-Western Lumber Co., Appellant, vs. Sud-  
den & Christenson, Owners and Claimants of the  
American Steamship "Tampico," Appellees. Stipu-  
lation and Order Under Subdivision 1 of Rule 16  
Enlarging Time to and Including Sept. 1, 1922, to  
File Record and Docket Cause. Filed Aug. 9, 1922.  
F. D. Monckton, Clerk. Refiled Aug. 10, 1922. F.  
D. Monckton, Clerk.

In the United States Circuit Court of Appeals for  
the Ninth Circuit.

No. —.

CROSSETT-WESTERN LUMBER CO.,

Appellant,

vs.

SUDDEN & CHRISTENSON, Owners and Claim-  
ants of the American Steamship "TAM-  
PICO,"

Appellees.

**Stipulation and Order Re Use of Apostles on Ap-  
peal in Circuit Court of Appeals — Case No.  
3533.**

It is stipulated and agreed, by and between the parties in the above-entitled case, acting through their respective proctors of record, that the apostles on appeal in the above-entitled case may be made up of the record filed in the former appeal in the above case, being Case #3533 in the Circuit Court of Appeals for the Ninth Circuit, and that it will be unnecessary for the appellant to reprint such portion of the record as is included in the apostles on appeal on the former appeal, and that the record, to be printed on this appeal, may be made up out of the documents filed in connection with this appeal, and such evidence as was taken following the

reversal of this case by the Circuit Court of Appeals for the Ninth Circuit.

PLATT & PLATT, MONTGOMERY &  
FALES,

Proctors for Appellant.

IRA S. LILLICK,

Proctor for Appellee.

It is so ordered.

W. H. HUNT,

U. S. Circuit Judge.

[Endorsed]: No. 3910. In the United States Circuit Court of Appeals for the Ninth Circuit. Crossett-Western Lumber Co., Appellant, vs. Sudden & Christenson, Owners and Claimants of the American Steamship "Tampico," Appellees. Stipulation and Order Re Use of Apostles on Appeal in C. C. A. Case No. 3533. Filed Aug. 12, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

---

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. —.

CROSSETT-WESTERN LUMBER CO.,

Appellant,

vs.

SUDDEN & CHRISTENSON, Owners and Claimants of the American Steamship "TAMPICO,"

Appellees.

**Stipulation and Order Re Substitution of Executors  
of Estate of Ed. Christenson.**

It is stipulated and agreed, by and between the parties in the above-entitled case, acting through their respective attorneys of record, that either party may, after the perfection of this appeal, move the Court for a substitution on the record of the executors of the estate of Ed. Christenson, deceased, and no objection will be made by either party to such substitution, and such substitution may be made after the perfection of the appeal, and both parties waive any objection to such questions in connection with said appeal.

PLATT & PLATT, MONTGOMERY &  
FALES,

Proctors for Appellant.

IRA S. LILLICK,

Proctor for Appellee.

It is so ordered.

WM. H. HUNT,

U. S. Circuit Judge.

[Endorsed]: No. 3910. In the United States Circuit Court of Appeals for the Ninth Circuit. Crossett-Western Lumber Co., Appellant, vs. Sudden & Christenson, Owners and Claimants of the American Steamship "Tampico," Appellees. Stipulation and Order Re Substitution of Executors of Estate of Ed. Christenson. Filed Aug. 12, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.